82-440

Office - Supreme Court, U.S.
FILED
SEP 14 1982
ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1982 TERM

In re FARMERS UNION CENTRAL EXCHANGE, INC.; FARMERS PETROLEUM COOPERATIVE, INC.; FCX, INC.; LANDMARK, INC.; LAND O'LAKES, INC.; MIDLAND COOPERATIVES, INC.; MFA OIL COMPANY; and TENNESSEE FARMERS COOPERATIVE, Petitioners.	On Petition for a Writ of Mandamus to the United States Bankruptcy Court for the Northern District of Illinois

---

MOTION FOR A STAY OF PROCEEDINGS PENDING A DETERMINATION ON THE PETITION FOR A WRIT OF MANDAMUS

H. Blair White
(Counsel of Record)
A. Bruce Schimberg
Mark E. MacDonald
Nathan P. Eimer
David M. Schiffman

Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
(312) 853-7000

Counsel for Petitioners

TO THE HONORABLE JUSTICE STEVENS:

Pursuant to Supreme Court Rule 44, petitioners respectfully move that the Court stay all proceedings below pending a determination by the Court on their Petition for a Writ of Mandamus. The petition seeks an order directing the Bankruptcy Court for the Northern District of Illinois to dismiss the complaints against petitioners on the grounds that "the new bankruptcy judges cannot constitutionally be vested with jurisdiction to decide this state-law contract claim." Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 102 S.Ct. 2858, 2880 n.40 (1982).

Petitioners* are defendants in two actions brought under the jurisdictional statute declared unconstitutional in Northern Pipeline. The complaints against petitioners seek more than $250,000,000 in damages under various theories, all arising under state law. The parties are just beginning an extensive deposition program; notices have already been filed for well over 100 depositions.

Because of the enormous expense involved in proceeding with this litigation, and because much that is done may have to be repeated when the cases are re-filed in a court of competent jurisdiction, this Court should stay the proceedings below until it can rule on the petition for a writ of mandamus. There is ample precedent for granting such relief. See, e.g., First Jersey Securities, Inc. v. Bergen, 605 F.2d 690, 692 (3d Cir. 1979), cert. denied, 444 U.S. 1079 (1980) (discovery stayed; mandamus ultimately granted dismissing complaint for lack of jurisdiction); Exchange National Bank of Chicago v. Wyatt, 517 F.2d 453 (2d Cir. 1975) (proceedings stayed; mandamus ultimately denied).

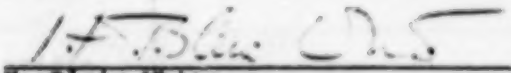
---

* Petitioners' statement under Supreme Court Rule 28.1 is contained in their Petition for a Writ of Mandamus.

In addition, a stay will serve the public interest in ensuring that the Constitution is obeyed and that bankruptcy judges cease hearing cases which can only be heard by Article III judges. Such a stay should not cause any hardship to the plaintiffs, for they can immediately re-file their complaints in state court.

WHEREFORE petitioners respectfully move that the Court enter an order staying the proceedings below pending a determination on their Petition for a Writ of Mandamus.*

Respectfully submitted,



H. Blair White
(Counsel of Record)
A. Bruce Schimberg
Mark E. MacDonald
Nathan P. Eimer
David M. Schiffman

Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
(312) 853-7000

Counsel for Petitioners

---

* Petitioners initially moved in the Bankruptcy Court for a stay pending appeal. That motion was denied (Exhibit A) on the basis of a General Order entered by the District Court for the Northern District of Illinois, which stated that "no stay of any proceedings in the bankruptcy court prior to 4 October 1982 is warranted by the Marathon decision." (Appendix to the Petition for a Writ of Mandamus, p. 7a). The Seventh Circuit never ruled on petitioners' motion for a stay. (Appendix, p. 1a).

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE ENERGY COOPERATIVE, INC., Debtor	No. 81 B 005811 (Chapter 11 Case) Judge Hertz
ENERGY COOPERATIVE, INC., Plaintiff, and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, et al., Intervening Plaintiffs, v. FARMERS UNION CENTRAL EXCHANGE, INC., et al., Defendants.	Adversary No. 81 A 3286
ENERGY COOPERATIVE, INC., et al., Plaintiffs, v. THE PERMIAN CORPORATION, et al., Defendants.	Adversary No. 81 A 2075

ORDER

This matter coming before this Court on the motion of the Member Owners to stay further proceedings pending appeal of the denial of their motions to dismiss or stay this action, and the Court having received memoranda and heard arguments,

IT IS HEREBY ORDERED that the motion to stay further proceedings pending appeal is hereby denied. (General Order of the Chief Judge of the United States District Court, Northern District of Illinois, dated July 14, 1982; Northern Pipeline Construction Co. v. Marathon Pipeline Co., et al., Nos. 81-150 & 81-156, decided June 28, 1982, p. 38. Judgment stayed until October 4, 1982.)

ENTER:

FREDERICK J. HERTZ
U. S. BANKRUPTCY JUDGE

Dated: July 29, 1982

AFFIDAVIT OF SERVICE

David Schiffman, an attorney, certifies that on September 14, 1982, three copies of the Petition For A Writ of Mandamus and one copy each of the Motion For An Expedited Determination and the Motion For A Stay of Proceedings Pending a Determination On The Petition For A Writ Of Mandamus were served by Federal Express upon the Solicitor General, Department of Justice, Washington, D.C. 20530, and by first-class mail, with postage prepaid, upon the Honorable Frederick J. Hertz, United States Bankruptcy Judge and upon each person listed in the attached Service List. All parties required to be served have been served.

David Schiffman

SUBSCRIBED AND SWORN TO
before me this 14th day
of September, 1982.

Notary Public

Norman H. Nachman, Esq.
Allan G. Sweig, Esq.
Nachman, Munitz & Sweig
115 S. La Salle Street
Chicago, Illinois 60603

J. Mark Fisher, Esq.
Schiff, Hardin & Waite
233 S. Wacker Drive
Room 7200
Chicago, Illinois 60606

Frank A. Karaba, Esq.
Crowley Barrett & Karaba
111 W. Monroe Street
Room 2200 E
Chicago, Illinois 60603

Milton L. Fisher, Esq.
J. Robert Stoll, Esq.
Mayer, Brown & Platt
231 S. La Salle Street
Chicago, Illinois 60604

Stephen F. Gordon, Esq.
Widett, Slater & Goldman
60 State Street
Boston, Massachusetts 02109

William H. Luking, Esq.
Ross, Hardies, O'Keefe
Babcock & Parsons
One IBM Plaza, Suite 1300
Chicago, Illinois 60611

Mathew J. Botica, Esq.
William J. McKenna, Esq.
Hopkins & Sutler
One First National Plaza
Suite 5200
Chicago, Illinois 60603

James A. Chatz, Esq.
Richard N. Golding, Esq.
Chatz,Berman,Maragos,Haber
& Fagel
140 South Dearborn Street
14th Floor
Chicago, Illinois 60603

William G. Swindal,Esq.
Pamela S. Hollys, Esq.
Hinshaw,Culbertson,
Moelmann,Hoban & Fuller
69 W. Washington Street
Chicago, Illinois 60602

Hill, Lewis, Adams,
Goodrich & Tait
32nd Floor
100 Renaissance Center
Detroit, Michigan 48243

Brent M. Siegel, Esq.
Chadwell,Kayser,Ruggles,
McGee & Hastings, Ltd.
8500 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

John R. Brandenburg, Esq.
Brandenburg,Appel &
Auwers, Ltd.
Suite 1324
30 West Washington Street
Chicago, Illinois 60602

John K. Kallman, Esq.
Rudnick & Wolfe
Suite 3800
30 N. La Salle Street
Chicago, Illinois 60602

David J. Krupp, Esq.
Krupp & Miller
208 S. La Salle Street
Chicago, Illinois 60604

Henry J. Staudinger, Esq.
Disalle & Staudinger
1919 Pennsylvania Avenue, N.W.
Suite 604
Washington, D. C. 20006

Daniel M. Pelliccioni,Esq.
Margaret E. Garms, Esq.
Katten,Muchin,Zavis,Pearl
& Galler
4100 Mid-Continental Plaza
55 East Monroe Street
Chicago, Illinois 60603

Philip C. Wherry, Esq.
Philip C. Wherry & Associates
135 South LaSalle Street
Chicago, Illinois 60603

William E. Kelly, Esq.
Pope,Ballard,Shepard &
Fowle
69 West Washington Street
Chicago, Illinois 60602

Gary W. Leydig, Esq.
Hinshaw,Culbertson,
Moelmann,Hoban & Fuller
69 W. Washington Street
Chicago, Illinois 60602

Dechert, Price & Rhoads
3400 Center Square West
1500 Market Street
Philadelphia, Pennsylvania 19102

Thomas G. Vent, Esq.
Seyfarth,Shaw,Fairweather
& Geraldson
55 E. Monroe Street
Chicago, Illinois 60603

July 22, 1982

Stanley Lowe, Esq.
True Oil Purchasing Co.
Drawer 2360
106 River Cross Road
Casper, Wyoming 82601

Eugene S. Burk, Esq.
Ronald G. Rossi, Esq.
Cogswell and Wehrle
Suite 1910
1660 Lincoln Street
Denver, Colorado 80264

Ronald M. DeKoven
Shearman & Sterling
53 Wall Street
New York, New York 10005

Ronald L. Rose, Esq.
Dyhema,Gossett,Spencer,
Goodnow & Trigg
35th Floor
400 Renaissance Center
Detroit, Michigan 48243

Tom Scheuneman, Esq.
O'Brien,Carey,McNamara,
Scheuneman & Campbell
35th Floor
1 North La Salle Street
Chicago, Illinois 60602

Laurence H. Kallen, Esq.
Arnstein,Gluck & Lehr
7500 Sears Tower
Chicago, Illinois 60606

Stanley J. Adelman, Esq.
Marc Levenstein, Esq.
Thomas W. Dressler, Esq.
Sonnenschein,Carlin, Nath
& Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

Linley E. Pearson
Attorney General of
Indiana
Herbert L. Allison
Deputy Attorney General o
Indiana
219 State House
Indianapolis, Indiana 462

David N. Missner, Esq.
Malcolm M. Gaynor, Esq.
Richard Bendix, Esq.
Schwartz,Cooper,Kalb &
Gaynor
33 North La Salle Street
Chicago, Illinois 60602

Harry M. Coven, Esq.
Harold S. Dembo, Esq.
Gould & Ratner
300 W. Washington Street
Chicago, Illinois 60606

Dennis M . O'Dea, Esq.
James A. Flesch, Esq.
Keck, Mahin & Cate
8300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

Randall A. Spencer, Esq.
Carmel,Baker & Marcus
One East Wacker Drive
Suite 1310
Chicago, Illinois 60601

Patrick A. Murphy, Esq.
Hill Blackett, III, Esq.
Murphy,Weir & Butler
2600 Bank of America Ctr.
San Francisco, California 94104

Ronald Quigley, Esq.
Davis,Matthews & Quigley
1415 Lenox Towers II
3400 Peachtree Road
Atlanta, Georgia 30326

James G. McConnell, Esq.
Rooks,Pitts,Fullagar &
Poust
55 W. Monroe Street
Room 1500
Chicago, Illinois 60603

David R. Brown, Esq.
David H. Coar, Esq.
United States Trustee
Room A-1303
175 West Jackson
Chicago, Illinois 60604

James J. Brennan, Esq.
Pope,Ballard,Shepard &
Fowle
32nd Floor
69 W. Washington Street
Chicago, Illinois 60602

Jonathan E. Rothschild
Rothschild, Barry & Myers
Two First National Plaza
Room 2500
Chicago, Illinois 60603

Thomas R. Savage
Clark Oil & Refining Corp.
8530 West National Avenue
Milwaukee, Wisconsin 53201

Michael A. Rosenthal, Esq.
Rosenthal and Associates
20 North Clark Street
Suite 3200
Chicago, Illinois 60602